



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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November 2, 1992

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble *LMN*
General Counsel

SUBJECT: MUR 2314 - Requests from Counsel With Regard to
Re-briefing

On September 22, 1992, counsel for the National Republican Senatorial Committee and James L. Hagen, as treasurer, responded to the letter and Supplemental Brief sent by this office on August 13, 1992. (Attachment 1). The Supplemental Brief addresses the effect of the decision of the United States Court of Appeals for the District of Columbia in FEC v. NRSC, No. 90-255, (D.C. Cir. June 12, 1992) upon the issues before the Commission in MUR 2314. The Supplemental Brief also contains certain procedural requests made by counsel for respondents.

Counsel had earlier, in a letter dated June 14, 1992, requested the Commission take no further action or vacate its finding of probable cause and reinstate the briefing process. Counsel also requested copies of all certifications in this matter. This Office determined that the questions of vacating the Commission's probable cause finding and its effect in FEC v. NRSC should be addressed simultaneously by the Commission. Copies of all certifications were supplied to counsel, but without vote tallies.

Counsel has not responded to the Supplemental Brief. Instead, counsel has reiterated his request that the Commission either take no further action or vacate its probable cause finding prior to reinstating the briefing process. He also has asked that full copies of the certifications be supplied.

The exchange of the Supplemental Brief does not preclude the Commission from considering the rescinding of its probable cause determination once all information is before the Commission. Rather, all options remain open. Vacating a probable cause determination is a serious step which should be taken only after all arguments regarding such a change have been presented to the Commission, particularly if the likelihood exist that the Commission's probable cause determination will be reinstated at a

later date. Such arguments can best be presented through a briefing process. Regarding the certifications, it would not be in the Commission's interest to provide the respondents with the vote tallies in this matter at this time.

Therefore, this office recommends the Commission deny counsel's request to vacate its probable cause finding prior to the reinstitution of the briefing process, deny access to the voter tallies included in the certification in this matter, and grant respondent fifteen (15) days from the date of receipt of notification of these determinations to file a responsive Supplemental Brief.

RECOMMENDATIONS

1. Deny counsel's request to vacate probable cause finding.
2. Deny counsel's request for certifications including voter tallies.
3. Grant 15 days to file a responsive Supplemental Brief.

Attachment

Counsel's letter dated 9/22/92

Staff Person: Anne Weissenborn



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: NOVEMBER 5, 1992

SUBJECT: MUR 2314 - GENERAL COUNSEL'S MEMORANDUM
DATED NOVEMBER 2, 1992

The above-captioned document was circulated to the Commission on MONDAY, NOVEMBER 2, 1992 at 4:00 P.M..

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda for TUESDAY, NOVEMBER 10, 1992.

Please notify us who will represent your Division before the Commission on this matter.

6611-566-4166